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RUEHOT/AMEMBASSY OTTAWA PRIORITY 0696  
RUEHFR/AMEMBASSY PARIS PRIORITY 7568  
RUEHRO/AMEMBASSY ROME PRIORITY 3367  
RUEHUL/AMEMBASSY SEOUL PRIORITY 2578  
RUEHKO/AMEMBASSY TOKYO PRIORITY 1578  
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C O N F I D E N T I A L SECTION 01 OF 05 STATE 126206

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TAGS: [AS](#) [CA](#) [CDG](#) [EC](#) [ESA](#) [EUN](#) [FR](#) [GM](#) [IT](#) [JA](#) [KACT](#) [KS](#) [KTIA](#) [MCAP](#)  
PARM, PO, PREL, SP, TSPA, UK, UP  
SUBJECT: U.S. RESPONSE TO EU DRAFT CODE OF CONDUCT FOR  
OUTER SPACE ACTIVITIES

REF: A. (A) 07 LISBON 002604  
[1](#)B. (B) 07 STATE 157671  
[1](#)C. (C) STATE 002007

Classified By: DEHoppler, Reasons 1.4(a),(d),(e),and(g)

[1](#)1. (SBU) THIS IS AN ACTION REQUEST. See paragraph 3 below.

[1](#)2. (U) BACKGROUND: On December 8, 2008, the European Union (EU) Foreign Ministers endorsed a draft proposal for a "Code of Conduct for Outer Space Activities" (<http://register.consilium.europa.eu/pdf/en/08/st17/st17175.en08.pdf>). Upon approving this draft package of voluntary transparency and confidence-building measures (TCBMs), in which Subscribing States would participate on a voluntary basis, the EU Council called for consultations "with key third countries that have activities in outer space or have interests in outer space activities, with the aim of reaching a text that is acceptable to the greatest number of countries."

[1](#)3. (C) The United States received the first, preliminary draft from the Portuguese Presidency of the EU Council in October 2007 (REF A). The United States provided "line-in/line-out" comments on this draft in November 2007 (REF B). The Department received a second preliminary draft of the Code of Conduct from the French Presidency in July [1](#)2008. On September 19, 2008, U.S. and EU experts held informal consultations in Washington, D.C., during which U.S. experts clarified several concerns regarding the second preliminary draft.

[1](#)4. (C) In November 2008, reflecting a desire to reach an expanded consensus, the French Presidency sent advance copies of the draft approved by the EU Foreign Ministers to eight countries "with activities in outer space or interests in outer space," including Canada, Japan, Israel, Brazil, India, the United States, Russia, and China.

[1](#)5. (C) In a November 27, 2008, letter to Acting Under Secretary of State for Arms Control and International Security, John C. Rood, French MFA Director of Strategic

Affairs, Security and Disarmament, Jacques Audibert, invited the United States to provide the EU with further comments. The French Presidency also expressed its interest in pursuing further bilateral consultations on the text "to continue to improve it." In his letter to U/S Rood, Audibert noted "fruitful" consultations between the United States and the EU on two preliminary versions of the draft code.

¶6. (SBU) In January 2009, the United States provided the Czech Presidency and the Council of the European Union with a U.S. non-paper (dated January 7, 2009) that detailed initial U.S. reactions to the EU's December 2008 draft (REF C).

¶7. (SBU) The current Swedish EU Presidency has continued developing the draft, using informal inputs provided by U.S. experts in June and September 2009 as well as inputs received during formal consultations with other countries with "activities in outer space or interests in outer space." In October 2009, the EU announced its intent to pursue the space Code of Conduct at an ad hoc conference to be convened in 2010, using a process for adoption modeled on the Hague Code of Conduct Against Ballistic Missile Proliferation. In November, Stockholm informally requested that Washington provide inputs prior to the conclusion of the Swedish Presidency. END BACKGROUND.

¶8. (U) ACTION REQUESTS:

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(SBU) For Stockholm: Embassy is requested to hand over the U.S. non-paper (contained in paragraph 9 below) to the Swedish Presidency of the EU (Ronnie Nilsson) as soon as possible. Embassy also is authorized to provide the U.S. line-in/line-out mark-up of the EU's December 2008 draft (to be transmitted via e-mail). Embassy should indicate that the United States welcomes further exchanges on this topic with Sweden and with future EU Presidencies. Embassy also should note that the U.S. non-paper is marked "For Government Use Only," and request that the non-paper be handled in the same manner as "Restreint UE" information.

(SBU) For USEU: USEU is requested to hand over the U.S. non-paper (contained in paragraph 9 below) to the Personal Representative on Non-Proliferation of WMD of the General Secretariat of the Council of the European Union, to Lars-Gunnar Wigemark of the Security Policy Unit of the European Commission's Directorate-General for External Relations, and to Stefan Nonneman of the Space Policy and Coordination Unit of the EC's Directorate-General for Enterprise and Industry, as well as to other appropriate officials, as soon as possible. USEU also is authorized to provide the U.S. line-in/line-out mark-up of the EU's December 2008 draft (to be transmitted via e-mail). USEU also should indicate that the United States welcomes further exchanges on this topic with EU Council Disarmament (CODUN) experts. Mission should note that the U.S. non-paper is marked "For Government Use Only," and request that the non-paper be handled in the same manner as "Restreint UE" information.

(SBU) For Madrid: Embassy is requested to hand over the U.S. non-paper (contained in paragraph 9 below) to the CODUN coordinator at the Spanish MFA as soon as possible. Embassy Madrid is also authorized to provide the U.S. line-in/line-out mark-up version of EU's December 2008 draft (to be transmitted via e-mail). Embassy should indicate that the U.S. welcomes further exchanges on this topic during the Spanish Presidency of the EU Council and note that the United States will continue to work with the European Union and other like-minded nations in efforts to advance a set of voluntary TCBMs that is acceptable to the greatest number of countries. Embassy also should note that the U.S. non-paper is marked "For Government Use Only," and request that the non-paper be handled in the same manner as "Restreint UE" information.

(SBU) For London and Paris: Embassies are requested to hand over the U.S. non-paper contained in paragraph 9 to John Saltford of the UK FCO and to Donatianne Hissard of the French MFA, as well as to other appropriate FCO or MFA officials. Posts also are requested to provide the U.S. line-in/line-out mark-up of the EU's December 2008 draft (to be transmitted via e-mail). Embassies also should indicate that the U.S. welcomes continued close collaboration within the P-3, as well as at the expert level on a bilateral basis, on approaches to build consensus for the EU's Code of Conduct initiative. Embassy also should note that the U.S. non-paper is marked "For Government Use Only," and request that the non-paper be handled in the same manner as "Restreint UE" information.

(SBU) For Berlin, Ottawa, Rome, and Tokyo: Embassies are requested to hand over the U.S. non-paper contained in paragraph 9 to outer space disarmament experts at Host Nation's MFAs. Posts also are requested to provide the U.S. line-in/line-out mark-up of the EU's December 2008 draft (to be transmitted via e-mail). Embassies should indicate that this is a further U.S. response to the EU's December 2008 draft "Code of Conduct for Outer Space Activities," and that the United States welcomes opportunities for discussions on specific points of the document at future bilateral space security dialogue discussions conducted at the expert level. Embassy also should note that the U.S. non-paper is marked "For Government Use Only."

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(SBU) For Canberra: Embassy is requested to hand over the U.S. non-paper contained in paragraph 9 to Cameron Archer at Australian DFAT, as well as to other appropriate DFAT officials. Post also is requested to provide the U.S. line-in/line-out mark-up of the EU's December 2008 draft (to be transmitted via e-mail). Embassy should indicate that this is a further U.S. response to the December 2008 EU's draft "Code of Conduct for Outer Space Activities," and that the United States is looking forward to the first bilateral space security dialogue discussions with Australia in March 2010. Embassy also should note that the U.S. non-paper is marked "For Government Use Only."

(SBU) For Seoul and Kyiv: Embassies are requested to hand over the U.S. non-paper contained in paragraph 9 to outer space disarmament experts at their Host Nation's MFA. Posts also are requested to provide the U.S. line-in/line-out mark-up of the EU's December 2008 draft (to be transmitted via e-mail). Embassies should indicate that this is a further U.S. response to the EU's December 2008 draft "Code of Conduct for Outer Space Activities," and that the United States is pleased that the Host Nation indicated its support in the UN General Assembly's First Committee for this worthwhile endeavor to develop space transparency and confidence-building measures. Embassy also should note that the U.S. non-paper is marked "For Government Use Only."

(SBU) For USDEL to CD: Following hand-over to Sweden, USDEL to the Conference on Disarmament is authorized to provide courtesy copies of the U.S. non-paper contained in paragraph 9 to the CD delegations of EU Member States. USDEL also is authorized to provide the U.S. line-in/line-out mark-up of the EU's December 2008 draft (to be transmitted via e-mail). USDEL also is authorized to share copies of the non-paper and line-in/line-out version of the EU's December 2008 draft with non-EU members of the CD's Western Group, as well as to Brazil and India. USDEL also should note that the U.S. non-paper is marked "For Government Use Only." END ACTION REQUEST.

19. (SBU) BEGIN TEXT OF U.S. NON-PAPER:

Non-Paper

December 9, 2009

The United States welcomes opportunities for substantive discussions on outer space transparency and confidence-building measures (TCBMs) with all established and emerging spacefaring nations.

In particular, the United States has appreciated the opportunity to exchange with European experts our thoughts on this pragmatic and constructive European Union initiative.

In consultation with the European Union and our allies in other regions, the United States currently is assessing options for international cooperation in space as a part of a comprehensive review of U.S. national space policy. This review of space cooperation options includes a "blank slate" analysis of the feasibility of options for effectively verifiable space-related arms control measures that advance the national security interests of the United States, its friends and allies, and all spacefaring nations.

--It is premature to predict the specific decisions that may result from the U.S. policy review.

--As a result, the United States currently takes no position regarding the feasibility and desirability of a political commitment (in Section 4.2. of the EU's draft) for Subscribing States to "refrain from any intentional action which will or might bring about, directly or indirectly, the damage or destruction of outer space objects, unless such action is conducted to reduce the creation of outer space debris and/or justified by imperative safety considerations."

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--The United States thanks the Swedish Presidency and the European Commission for the EU's timely and constructive inputs dated October 8, 2009, to our Presidentially-directed review.

--The United States looks forward to consulting with the European Union in early 2010 on insights gained from this Presidential review as part of our continuing dialogues on space security.

The United States welcomes opportunities for fruitful and forthright exchanges with the European Union to advance voluntary transparency and confidence-building measures that are acceptable to the greatest number of countries. In this regard, the United States notes its proposals to make several key revisions in the Council of the European Union's draft:

--In Section 2, relating to "General Principles":  
----Revise language in the fourth principle for greater clarity regarding the responsibility of Subscribing States to take measures to prevent outer space from becoming an area of conflict. In modifying the word "measures," the United States believes the adjective "reasonable" better reflects a Signatory State's responsibility than the adjective "adequate." To the United States, "adequate" means the measures a party employs must resolve the problem, otherwise that party could be accused of being deficient in its actions.

--In Section 6, relating to "Notification of outer space activities":  
----Revise language in Sub-section 6.1. to clarify the circumstances for notification of planned maneuvers, collisions, and other orbital incidents that could pose hazards to spaceflight safety.  
----Remove a commitment in Sub-section 6.1. for notification of "orbital changes and re-entries, as well as other relevant orbital parameters" to "all potentially affected Subscribing States." The United States believes that this proposed measure is too broad, and could if adopted, constrain unnecessarily national security space activities that are

already conducted with due regard to the corresponding interests of all other spacefaring nations.

----Add a provision in Sub-section 6.1. to provide for notification of high-risk re-entry events, using qualification criteria developed by the Inter-Agency Space Debris Coordination Committee (IADC).

----Add a new Sub-section (6.2.) defining the channels for Subscribing States to provide appropriate notifications.

----Delete original Sub-section 6.2, which repeats a commitment made in Sub-section 3.1 (b).

--In Section 9, on "Consultation mechanism":

----Revise language in Sub-section 9.1. to clarify the conditions and channels for consultations between and among Subscribing States.

----Substitute an alternative word for "proven" in Sub-section 9.2 for the purposes of clarity; it is unclear what "proven incidents" are.

----Revise language in Sub-section 9.2. to clarify the approach used in a possible investigation mechanism to develop advisory findings and recommendations of a non-binding nature.

--In Section 10, on "Biennial meeting of Subscribing States:"

----Add language on the agenda for biennial meetings to allow for the discussion of measures that might appear necessary, due to technology advances. The United States believes that this provision could allow for the Code to adapt to the development of new capabilities, such as novel concepts for the removal of orbital debris.

--In Section 12, on "Outer space activities database:"

----Add a provision to allow for the sharing of information with all Subscribing, as well as non-Subscribing, States on the basis of the principle of "co-operation and mutual assistance" in Article IX and in Article XI of the Outer

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Space Treaty, in which Subscribing States conducting activities in outer space, including the Moon and other celestial bodies, agree to inform the Secretary-General of the United Nations, as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations, and results of such activities. In order to enhance space-flight safety, the United States would support providing the database to all spacefaring nations, whether or not they are Subscribing States.

The United States notes that these proposed revisions will help to address a number of the key concerns identified in a January 7, 2009, non-paper provided to the Czech Presidency. These concerns include:

-- Language in the Section on "Notification of Space Activities" (Section 6.1) of the December 2008 draft that calls on Subscribing States to provide prior notification of "scheduled maneuvers" or "orbital changes and re-entries, as well as other relevant orbital parameters," regardless of any risk of hazard to another nation's space activities.

-- Draft language on a "consultation mechanism" (Section 9.1) that:

---- Would enable Subscribing States to pursue creation of a consultative mechanism to discuss the space-related activities of a Subscribing State for the purpose of "achieving acceptable solutions regarding measures to be adopted in order to prevent or minimize the inherent risks;" and

---- Calls upon the Subscribing States that are involved in this consultative mechanism to "seek solutions based on an equitable balance of interests."

-- Draft language on "mechanism to investigate proven incidents affecting space objects" (Section 9.2).

The United States also continues to have significant concerns about the widespread use of language connoting binding obligations, such as "shall" and "will," in the proposed non-binding Code of Conduct. The use of such language in a non-binding document is contrary to established practice; for example, The Hague Code of Conduct, which is not binding under international law, does not use such binding language. The United States believes that its proposed revisions more properly reflect the non-binding nature of the proposed Code of Conduct.

END TEXT OF U.S. NON-PAPER.

¶10. (U) Any reporting on this subject should be flagged for the Department (ISN/MDSP: Richard H. Buenneke) and Geneva (CD).  
CLINTON